STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

███████ ██████
█████████████████
███████████████

DECISION

FTI/172867

PRELIMINARY RECITALS

Pursuant to a petition filed March 15, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 26, 2016, at La Crosse, Wisconsin.

The issue for determination is whether this appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

████ ██████
███████████████
██████████████

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: ██████████
   La Crosse County Department of Human Services
   300 N. 4th Street
   PO Box 4002
   La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ██████████) is a resident of La Crosse County.

2. During a FS overpayment investigation by the agency, petitioner stated that he uses the address at ████████████████████ for various official government communications because it is the most reliable address for him. The address is the residence of ████████.

3.   The agency issued a tax intercept notice on 2/12/16. This was sent to ███████████ ████, WI.

4.   Petitioner appealed by letter requesting hearing postmarked on 3/15/16 and received on 3/17/16.

DISCUSSION

Wis. Stat. § 49.85, provides that the Department shall, at east annually, certify to the Department of Revenue amounts that it has determined that it may recover resulting from overpayments of public assistance, including Food Stamps (FS). See also, Wis. Stat. § 49.125; Wis. Stat. § 49.195(3); and, 7 U.S.C. § 2022.

The Department of Workforce Development must notify the person that it intends to certify the overpayment to the Wisconsin Department of Revenue for setoff from his/her state income tax refund, and must inform the person that s/he may appeal the decision by requesting a hearing. Wis. Stat. § 49.85 (4).

Wis. Stat. § 49.85(3)(b) provides that the DWD must give the person whose tax refund is to be intercepted at least 30 days written notice of the impending intercept by sending the required certification notice to his or her last known address. Wis. Stat. § 49.85(3)(b)(2) also requires that the notice issued inform the person subject to the intercept that he or she has *30 days from the date of the notice to appeal the certification action*. Wis. Stat. § 49.85(4)(b), provides for an appeal contesting the certification under Wis. Stat. § 227.44.

The hearing right is described in Wis. Stat. § 49.85(4)(b) as follows:

> If a person has requested a hearing under this subsection, the department of workforce development shall hold a contested case hearing under s.227.44, except that the department of workforce development may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

Wis. Stat. § 49.85(4)(b).

In this case, the Department mailed a state income tax refund intercept notice to the petitioner concerning the FS overissuance claims in February, 2015, to him at his last known and most reliable address according to his statements to the overpayment investigator. He denied timely receipt stating that ███ ████ only delivered it to him a month late.

I cannot find the appeal timely. The agency sent to tax intercept notice to the petitioner at the address he uses for other official communication from government agencies. Petitioner has used the ███████ address for vehicle registrations, phone service, employer records, and for unemployment benefits.   This is the address that he provided to the investigator as his most reliable mailing address. Petitioner also stated in his hearing request that he spends a couple nights a week at this address.

CONCLUSIONS OF LAW

The appeal is not timely.

THEREFORE, it is   **ORDERED**

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.
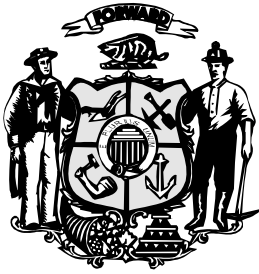
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison, Wisconsin, this 25th day of May, 2016

\s\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 25, 2016.

La Crosse County Department of Human Services
Public Assistance Collection Unit